

AN ACT

RELATING TO RETIREE HEALTH CARE; AMENDING THE RETIREE HEALTH CARE ACT TO INCLUDE ADDITIONAL PUBLIC ENTITIES AS ELIGIBLE EMPLOYERS AND GIVE THE BOARD OF THE RETIREE HEALTH CARE AUTHORITY MORE DISCRETION IN SETTING CONTRIBUTION AND BENEFIT LEVELS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4, as amended) is amended to read:

"10-7C-4. DEFINITIONS. -- As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act or the employee of an independent public employer;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the board of the retiree health

care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) an unmarried child under the age of nineteen who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same

household;

(3) a child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of nineteen and twenty-five and is a full-time student at an accredited educational institution, provided that "full-time student" shall be a student enrolled in and taking twelve or more semester hours or its equivalent contact hours in primary, secondary, undergraduate or vocational school or a student enrolled in and taking nine or more semester hours or its equivalent contact hours in graduate school;

(4) a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap, provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(5) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(6) a surviving dependent child who is the dependent child of a deceased eligible retiree whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "independent public employer", which means a municipality, county or public entity that is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) if a person eligible under Subparagraph (a) of this paragraph applies before August 1, 1993 to the authority to participate in the program, then he will be eligible to participate notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph;

(2) a "salaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group

health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) if a person eligible under Subparagraph (a) of this paragraph applies before August 1, 1993 to the authority to participate in the program, then he will be eligible to participate notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph; or

(3) an "eligible participating retiree" who is a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board

or the governing authority or of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree: 1) retired on or before June 30, 1990; and 2) at the time of retirement did not have a retirement health plan or retirement health insurance coverage available from his employer; or

(c) is a retiree who: 1) was at the time of retirement an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires less than five years after the date participation begins, in which event the time period required for employee and employer contributions shall become the period of time between the date participation begins and the date of retirement; and 3) is certified to be a retiree by the educational retirement

director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" include but are not limited to:

(1) those dependents created by common law relationships;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal

guardianship; and

(4) anyone not specifically referred to as an eligible dependent pursuant to the rules adopted by the board;

L. "participating employee" means an employee of a participating employer, which employee has not been excluded from participation in the Retiree Health Care Act pursuant to Section 10-7C-10 NMSA 1978;

M "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D, E or G of Section 10-7C-9 NMSA 1978, as applicable;

N. "public entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government; and

O. "retiree" means a person who:

(1) is receiving:

(a) a disability or normal retirement benefit or survivor's benefit under the Educational Retirement Act;

(b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public

Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or

(2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act."

Section 2. Section 10-7C-7 NMSA 1978 (being Laws 1990, Chapter 6, Section 7, as amended) is amended to read:

"10-7C-7. BOARD--DUTIES.--In order to achieve the purposes of the Retiree Health Care Act, the board may take all actions reasonably necessary to implement that act, including but not limited to the following:

A. employ or contract for the services of the state fiscal agent or select its own fiscal agent in accordance with the Procurement Code;

B. employ or contract for persons to assist it in carrying out the Retiree Health Care Act and determine the duties and compensation of these employees;

- C. collect and disburse funds;
- D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;
- E. promulgate and adopt necessary rules and procedures for implementation of the Retiree Health Care Act;
- F. negotiate insurance policies covering additional or lesser benefits as determined appropriate by the board and, at the board's discretion, determine various benefit levels based on retirees' accumulated years of credited service, but the board shall maintain all coverage as required by federal or state law for each eligible retiree. In the event it is practical to wholly self-insure part or all of the retiree health care coverages, the board may do so;
- G. procure group health care and other coverages authorized by the Retiree Health Care Act in accordance with the Procurement Code and the Health Care Purchasing Act;
- H. establish the procedures for contributions and deductions;
- I. determine methods and procedures for claims administration;
- J. administer the fund;
- K. contract for and make available to all eligible retirees and eligible dependents basic and optional

group health insurance plans. The optional coverage may include a lower deductible, lower coinsurance or additional categories of benefits permitted under this section and all other applicable sections of the Retiree Health Care Act to provide additional levels of coverages and benefits. Any additional contributions for these optional plans shall be paid for by the eligible retiree or eligible dependent. The coverage provided by the plans shall be secondary to all other benefit coverages to which the eligible retiree or eligible dependent is entitled. In the event a covered eligible retiree becomes employed by an employer offering its employees a basic plan of benefits, the coverage provided by the plan under the Retiree Health Care Act shall be secondary to such coverage regardless of whether the employee enrolls in that employer's plan. In the event the eligible retiree or eligible dependent is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan under the Retiree Health Care Act shall be secondary to medicare hospital and medical insurance to the extent permitted by federal law;

L. provide, at its discretion, different plans for eligible retirees and eligible dependents covered by medicare than the plans provided for eligible retirees and eligible dependents who are not covered by medicare; and

M promulgate and adopt rules governing

eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers who are independent public employers and their retirees and participating employees. "

Section 3. Section 10-7C-9 NMSA 1978 (being Laws 1990, Chapter 6, Section 9, as amended) is amended to read:

"10-7C-9. PARTICIPATION. --

A. All eligible employers shall participate in the Retiree Health Care Act except as provided in Subsection D or E of this section. Participating employers are required to continue existing group health insurance coverages until such time as similar coverages are offered by the board under the Retiree Health Care Act.

B. Participation in the basic health insurance coverages provided by the authority shall be conditioned upon receipt by the board of a certificate of eligibility from the educational retirement director, the executive secretary of the public employees retirement association, the director of the public school insurance authority or the governing body of an independent public employer. Once eligibility is established, for each eligible retiree who retires on or after February 13, 1990, the board shall contribute from money in the fund the authority's portion of the premium for the basic plan of benefits commencing no earlier than January

1, 1991, plus the balance of the premium, which shall be collected from the retiree.

C. Each eligible retiree shall accept or reject enrollment in the basic plan of benefits on an enrollment form provided by the board. An eligible retiree who rejects enrollment or fails to return a properly executed enrollment form within the open enrollment period as established by the board forfeits all entitlement and eligibility for benefits under the Retiree Health Care Act until the next open enrollment period as established by the board.

D. On or before January 1, 1991, municipalities, counties and institutions of higher education that are retirement system employers may at their option determine by ordinance, or for institutions of higher education, by resolution, to be excluded from coverage under the Retiree Health Care Act; that determination shall be subject to the following conditions:

(1) any contributions paid into the fund by a municipality, county or institution of higher education that exercises timely an irrevocable option not to participate in the Retiree Health Care Act under this subsection shall be returned without interest to that municipality, county or institution of higher education for return of the employee contributions to the employees and for crediting of the employer contributions to the appropriate

fund of the municipality, county or institution of higher education. If the determination to be excluded from coverage is exercised by a municipality, county or institution of higher education prior to July 1, 1990, then that municipality, county or institution of higher education shall not be required to make the contributions that would otherwise be required by Section 10-7C-15 NMSA 1978;

(2) any municipality, county or institution of higher education, in addition to complying with all other required notice and public hearing or meeting requirements, shall, no less than thirty days prior to the public hearing or public meeting on a proposed ordinance or proposed resolution, notify the authority of the public hearing or public meeting by certified mail; and

(3) in the event that:

(a) the number of active employees employed by municipalities contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all municipalities that are retirement system employers, the municipal position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a municipality with a population greater than one hundred thousand that is located in a class A county exercises this option, then the sixty-percent requirement shall be applied

to the remaining municipalities only;

(b) the number of active employees employed by counties contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all counties that are retirement system employers, the county position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a class A county exercises this option, then the eighty-percent requirement shall be applied to the remaining counties only; or

(c) the number of active employees employed by institutions of higher education contributing to the fund reaches a number equaling seventy percent or more of all active employees employed by an institution of higher education contributing to the educational retirement fund, the institution of higher education position on the board shall be restored within sixty days of the date that percentage is reached.

E. An independent public employer may become a participating employer if that employer satisfies the requirements imposed pursuant to Subsection M of Section 10-7C-7 NMSA 1978 and if that employer also files with the authority on or prior to January 1, 1991 or prior to July 1, 1993 or July 1 of any year a written irrevocable election by

the governing body of that employer to participate in the Retiree Health Care Act. Any such independent public employer that chooses to become a participating employer after January 1, 1993 shall begin making the appropriate preliminary employer and employee contributions to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act.

F. Any other provisions of the Retiree Health Care Act notwithstanding, retirees of institutions of higher education participating in the Retiree Health Care Act for whom those institutions of higher education have existing plans, programs, policies or contracts for health care benefits shall not be required to participate in the Retiree Health Care Act.

G. A municipality or county that enacted an ordinance or an institution of higher education that enacted a resolution prior to January 1, 1991 pursuant to Subsection D of this section to be excluded from coverage under the Retiree Health Care Act may become a participating employer if that employer satisfies the requirements imposed pursuant to Subsection M of Section 10-7C-7 NMSA 1978 and if that

employer also enacts an ordinance or resolution, as applicable, after a public hearing and published notice of the hearing, prior to July 1, 1993 or July 1 of any year to choose to become a participating employer under the Retiree Health Care Act. Any such municipality, county or institution of higher education that chooses to become a participating employer after January 1, 1993 shall begin making the appropriate preliminary employer and employee contributions to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act. "

Section 4. Section 10-7C-15 NMSA 1978 (being Laws 1990, Chapter 6, Section 15) is amended to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS. --

A. Following completion of the preliminary contribution period, each participating employer for the fiscal year beginning July 1, 1990 and thereafter shall make contributions to the fund in the amount of one percent of each participating employee's annual salary.

B. Following completion of the preliminary contribution period, each participating employee as a condition of employment for the fiscal year commencing July

1, 1990 and thereafter shall contribute to the fund an employee contribution in an amount equal to one-half of one percent of the employee's salary. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. A participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

D. The employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

E. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health

Care Act.

F. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 1995, the legislature shall review and adjust the distribution pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act. "

Section 5. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately. \_\_\_\_\_